



Building and Development Tribunals – Decision

Integrated Planning Act 1997

Appeal Number: 3–08–069

Applicant: Michael George Green

Assessment Manager: Keith Thomas for and on behalf of Thomas Independent Certification

Concurrence Agency: Gold Coast City Council
(if applicable)

Site Address: 4 Midshipman Court, Paradise Waters and described as Lot 74 RP 133282—the subject site

Appeal

Appeal under section 4.2.9 of the *Integrated Planning Act 1997* (IPA) against the decision of the assessment manager to refuse a development application for building works, namely an application to carry out alterations and additions to an existing dwelling involving an extension to a roof to be located within 1.5 metres of the northern side boundary and within 6.0 metres of the road frontage.

Date of hearing: 11.30 am – Tuesday, 28 October 2008

Place of hearing: The subject site

Tribunal: Mr Paul Smith – Chair
Mr Steve Adams – Member

Present: Mr Peter Rigley – Builder, representing the Applicant
Mr Keith Thomas – Assessment Manager
Mr Patrick Giess – Gold Coast City Council Representative
Mr Jonathan Lee – Gold Coast City Council Representative
Mr Peter Krook – Gold Coast City Council Representative

Decision:

The Tribunal, in accordance with section 4.2.34 (2) (a) of the IPA, **confirms** the decision of the assessment manager to refuse the development application.

Background

An amended development application for carrying out of building work under IPA was received by the assessment manager for alterations and additions to the existing detached dwelling located on the subject site for the purpose of a store room.

The applicants representative at the hearing advised that what is proposed is not a store room but a third roofed carport and that it was not proposed to add to or alter the existing cross-over. Vehicles would enter and leave the site via the existing cross-over.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Notice of Appeal' received by the Registrar on 22 September 2008 including grounds for appeal and photographs of other carports in the area accompanying the appeal application.
2. Copy of Council's referral (concurrence) agency response, dated 25 June 2008, directing the assessment manager to refuse the application.
3. Development application decision notice from the assessment manager, dated 22 August 2008, refusing the application.
4. 'Form 8 – Notice of Election' from Council, dated 2 October 2008.
5. Written submission from Council, dated 27 October 2008.
6. Copies of plans provided to the tribunal at the hearing showing details of the development.
7. Verbal submissions from the applicant's representative at the hearing.
8. Verbal submissions from the assessment manager at the hearing.
9. Verbal submissions from Council representatives at the hearing.
10. The *Building Act 1975* (BA).
11. The Building Regulation 2006.
12. The IPA.
13. The *Integrated Planning Regulation 1998* (IPR).
14. Relevant section of Council's planning scheme.

Findings of Fact

The Tribunal makes the following findings of fact:

1. A building development application was made for the alteration and additions to the existing Class 1a dwelling on the subject site. The proposal involves the construction of a roof to cover a Class 10a carport located up to, or close to, the northern side boundary and extending to within 6.0 metres of the front road boundary.
2. The subject site:-
 - a) is 794m² in area;
 - b) is located on the western side of Midshipman Court;
 - c) is generally level;
 - d) accommodates a recently renovated dwelling with a double carport erected up to or close to the front road alignment;
 - e) has a single vehicle cross-over servicing the existing double carport;
 - f) is paved in the area which is the subject of the application;
 - g) is located in a pleasant and quiet residential street occupied predominantly by low rise detached residential dwellings generally either:-

- i. set back in the order of 6.0 metres from the road alignment; or
 - ii. with open double carports erected up to or close to the road alignment.
3. While there are a number of triple carports in the street those carports do not visually dominate the streetscape. The existing triple carports are not obvious by a pedestrian standing on the road immediately in front of the subject site.
4. The local government is identified in IPA part 3.1.8 (1) and the IPR schedule 2 as the concurrence agency for assessing non-compliance with the alternative siting provisions established under the BA section 33.
5. The BA, specifically section 83 (d), prevents the private building certifier from approving the building development application if a concurrence agency has jurisdiction for a part of the building assessment work until that part has been assessed by the concurrence agency, under the building assessment provisions. For the BA section 30 (c) a planning scheme provisions made under section 32 or 33 is a building assessment provision.
6. The building setback provisions of the Detached Dwelling Domain Place Code of Council's Planning Scheme 2003 is therefore relevant to the application.
7. Performance Criteria 2 of the Detached Dwelling Domain Place Code provides:-

"All buildings must provide for setbacks from the street frontage and the side and rear boundaries, which are appropriate to the efficient use of the site and the streetscape character of this domain".
8. The corresponding Acceptable Solution 2 provides:-

The building (excluding a covered car parking space or carport) is setback not less than six metres from the frontage of the site and setback from the side and rear boundaries at not less than:-

 - a) 1.5 metres, measured from the outermost projection of that part of the building which is 4.5 metres or less above ground level;
 - b) 2.0 metres, measured from the outermost projection of that part of the building which is greater than 4.5 metres but not greater than 7.5 metres above ground level;
 - c) 2.0 metres, plus 0.5 metres for every 3.0 metres or part thereof, measured from the outer most projection of that part of the building which is greater than 7.5 metres above ground level.
9. The proposed carport roof extends within 1.5 metres of the side boundary and within 6.0 metres of the front road alignment and does not comply with Acceptable Solution 2.
10. If Council's Detached Dwelling Domain Place Code alternative siting provisions established under the BA section 33 are relevant, for the development application to be approved:-
 - a) it must comply with Performance Criteria PC2, or made to comply by the imposition of conditions;
or
 - b) if it does not comply, or cannot be made to comply by the imposition of conditions, there must be sufficient grounds to justify approval having regard to the purpose of Council's Detached Dwelling Domain Place Code.
11. The Tribunal is of the opinion that there is two ways the relevant provisions of the Detached Dwelling Domain Place Code may be interpreted.

12. One interpretation is that the alternative siting requirements of PC2 and AS2 only apply to buildings (*excluding a covered car parking space or carport*). On this interpretation the QDC will be relevant to the assessment of the application.
13. The second interpretation is that the alternative siting requirements of PC2 and AS2 is that there is no acceptable solution for a carport but because a carport is a class 10a building it is dealt with by PC2. On this interpretation the QDC will not be relevant to the assessment of the application.
14. The Tribunal expresses no opinion on which interpretation is correct because, on both views, it believes the performance criteria set out in P1 and P2 of the QDC, including the bulk of the building or structure, whether the proposed development would provide adequate daylight and ventilation to habitable rooms and allow adequate light and ventilation to habitable rooms of buildings on adjoining lots or adversely impact on the amenity and privacy of residents on adjoining lots, would be matters to take into account when assessing an application under both.

Reasons for the Decision

After consideration of;

1. the particular shape and characteristics of the subject site;
2. Council's Detached Dwelling Domain Place Code;
3. development criteria set out in P1 and P2 of the QDC;
4. the design of the carport, and
5. the character of street in which the subject site is located,

the tribunal formed the opinion that the proposed does not comply with Performance Criteria PC2 of the Residential Choice Domain Place Code of Council's Planning Scheme 2003 or with the relevant provisions of the QDC.

Further the development application cannot be made to comply by the imposition of conditions and there are not sufficient grounds to justify approval having regard to the purpose of Council's Detached Dwelling Domain Place Code.

Paul Smith
Building and Development Tribunal Chair
Date: 21 November 2008

Appeal Rights

Section 4.1.37 of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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